MAR

IN THE

Supreme Court of the United States.

OCTOBER TERM 1903.

No. 503.

WM. H. POPE

vs.

JOHN M. C. WILLIAMS

AND

JOHN W. HARPER,

BOARD OF REGISTRY FOR ELECTION DISTRICT NO. 7 OF MONTGOMERY COUNTY, MARYLAND.

In error to the Court of Appeals of Maryland. Advanced by special order of the Court and set for hearing on March 7, 1904.

BRIEF OF DEFENDANTS IN ERROR.

JOHN PRENTISS POE,
BOWIE F. WATERS,
For Defendants in Error.

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The facts are these:

On September 29, 1903, the plaintiff in error, claiming to be a citizen of Maryland and a resident therein since June 7, 1902, applied to the defendants in error, who *then* constituted the Board of Registry for Election District No. 7 of Montgomery county, in which district he resided, to be

registered as a qualified voter on the registers of voters of that district which were *at that time* in their custody.

They declined to register him as a qualified voter, giving as their reason that he did not produce and exhibit to them the record of his intention to become a resident of Maryland at the time of his removal into the State, as required by Chapter 133 of the Acts of 1902, which went into effect on March 29, 1902.

This Act, passed as an amendment and supplement to the Public General Laws of the State, title "Elections," sub-title "Registration," as Section 25 B of that Article, is as follows:

> "Section 25 B. All persons who, after the passage of this Act, shall remove into any county of this State, or into the city of Baltimore from any other State, district or territory, shall indicate their intent to become citizens and residents of this State by registering their names in a suitable record book, to be procured and kept for the purpose by the clerk of the Circuit Court for the several counties and by the clerk of the Superior Court of Baltimore City; such record to contain their names, residence, age and occupation; and the intent of such persons to become citizens and residents of this State shall date from the day on which such registry shall be so entered in such record book by the clerk of the Circuit Court for the county or of the Superior Court of Baltimore City, as the case may be, into which county or city such person shall so remove from any other State, district or territory. *And no person coming into this State from any other State, district or territory shall be entitled to registration as a legal voter of this State until one year after his intent to become such legal voter shall be thus evidenced by such entry in such record book, and such entry or a duly certified copy thereof shall be the only competent and admissible evidence of such intent.* And the clerk of the Superior Court of Baltimore City and the several Courts of the several counties shall immediately upon the passage of this Act procure a suitable record book for the recording therein of such entries, arranged alphabetically, under the names of such persons. For every person so registered, under

the provisions of this section, they shall be entitled to demand and receive the sum of twenty-five cents to be paid to said clerks by the Mayor and City Council of Baltimore and the County Commissioners, respectively. A copy of such record, duly certified by said clerks, shall be evidence of the right of such persons to registration as legal voters, according to law, and each person so registered shall be entitled to such certified copy upon demand without charge."

The plaintiff admits that he did not indicate his intent to become a citizen and resident of Maryland at the time he moved into the State from the District of Columbia by registering his name, residence, age and occupation with the clerk of the Circuit Court for Montgomery County as prescribed by this Act, and it was because he failed thus to produce the *statutory evidence* of his citizenship and residence for the time prescribed by the Constitution of the State, to wit., one year within the State and six months within the election district, that the defendants, in the performance of their official duty, declined to register him as a qualified voter.

By the Constitution of Maryland no man is entitled to vote unless he is duly registered according to the law of the State.

After completing the work of registration which the law requires to be finished on Tuesday three weeks preceding the election in November, it is the duty of the Board of Registry to return to the Board of Supervisors of Election of the county the registers containing the names of the persons registered as qualified voters, and it is then the duty of the Board of Supervisors of Election to send these registers containing the lists of qualified voters to the judges of election not more than three days nor less than one day before the election. After the election the registers are returned by the judges of election to the custody of the Supervisors

of Election and are retained by them until September of the following year, when they are sent to a new Board of Registry appointed in the preceding July. The defendants were duly appointed as the Board of Registry in July, 1903, to serve for one year.

After finishing the registration on October 21, 1903, they delivered the registers to the Board of Supervisors of Election of the county and after the election on the 3d November, 1903, the registers were sent by the Judges of Election to the Supervisors of Election, in whose custody they now are and will remain until a *new* registration, beginning in September and ending in October, 1904, shall be made in entirely new books.

It will thus be seen that the defendants have not now these registers in their possession or custody and never will have them again in their possession or custody or subject to their control.

These facts are mentioned here in order to bring clearly before the Court the significant and controlling fact that since the judgment of the Court of Appeals of Maryland, which the plaintiff asks this Court to review and reverse, there has been without the fault of the defendants such a change in the condition of things that it is not now possible for the defendants to register the plaintiff, even if this Court should think that the Court of Appeals of Maryland erred in its decision and judgment, and that the plaintiff was entitled under the 14th Amendment to be registered when he applied for registration on the 29th of September, 1903.

After being refused registration for the reason given by the defendants for their official act, the plaintiff filed a petition under Section 23 of the Election Law of Maryland, in the Circuit Court for Montgomery County, alleging that Section 25 B of that law is unconstitutional because repugnant to the Constitution of Maryland and also to the 14th Amendment to the Constitution of the United States and *praying for the passage of an order directing his name to be entered as a qualified voter on the registers.* (Record, 8-11.)

The defendants demurred to this petition. The Circuit Court for Montgomery County sustained the demurrer. Thereupon the plaintiff appealed, as authorized by the Maryland law, to the Court of Appeals.

On the 22d of October, 1903, the order of the Circuit Court for Montgomery County was affirmed by the Court of Appeals.

Thereupon the plaintiff brings the case to this Court, insisting that Section 25 B is unconstitutional and void because contrary to the 14th Amendment.

It will be observed that in his petition in the Circuit Court he assails the Act chiefly because of its alleged violation of the Constitution of Maryland, laying but little stress upon his contention that it also violated the 14th Amendment. The Court of Appeals held that the Act was not repugnant to any provision of the State Constitution nor of the Fourteenth Amendment.

The reasons for these conclusions will be found fully stated in the opinion of the Court delivered by Judge Page. (Record 13-18.)

So far as the Act is claimed to be contrary to the Constitution of the State the question is finally set at rest by the decision of the Court of Appeals and that question is not subject to review by this Court.

It has long been an established doctrine of this Court that the construction by the Courts of the several States of their constitution and laws is binding upon this Court in all cases except where a federal question is involved.

Guthrie on 14th Amendment, 44.
Brannon on 14th Amendment, 395–419.
Slaughter-House Cases, 16 Wall. 66.
Louisiana vs. Pilsbury, 105 U. S. 294.
Gibson vs. Mississippi, 162 U. S. 582.
Forsyth vs. Hammond, 166 U. S. 519, and cases cited.

Accepting this as a settled doctrine, the plaintiff cannot and does not claim here that Section 25B violates in any way the Constitution of the State, but limits his contention to the single ground that it is repugnant to the 14th Amendment.

In his petition to the Circuit Court he states his position as follows:

> "6. Said law is repugnant to that portion of section 1 of the Fourteenth Amendment of the Constitution of the United States which declares that 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, *and of the State wherein they reside*,' because by said law it is in effect ordained that male citizens of the United States, of the age of twenty-one years and upwards, removing into the State of Maryland after March 29, 1902, with the intention of making said State their permanent domicile, shall not be treated as citizens or residents of Maryland, or given the rights and privileges of citizens of Maryland until they have been naturalized in the mode prescribed by said law.
>
> "7. Said law is also repugnant to that portion of section 1 of said Fourteenth Amendment to the Constitution of the United States which prohibits a State from denying any person within its jurisdiction the equal protection of the laws, because said law operates an unjust and unreasonable discrimination against citizens of the United States coming into the State of Maryland to permanently reside therein after March 29, 1902, who may desire to become qualified voters therein." (Record, 10-11.)

In his assignment of errors he states his contention and prayer for relief as follows:

II.

> "The Court of Appeals erred in the decision and judgment rendered by it in holding and deciding that the Act of the Legislature of Maryland assailed in the above cause was a valid statute and was not repugnant

to fundamental and inalienable rights of citizens of the United States and to implied guarantees of the Constitution of the United States whereby every citizen of the United States is entitled to remove into any State of the Union without being subjected (because of removal after a particular date from another State, or from a district or Territory of the United States), to the performance of offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of civil rights and privileges.

III.

"In holding and deciding that the act complained of was a valid statute, and did not operate an unjust discrimination against citizens of the United States removing into Maryland after March 29, 1902, and was not repugnant to that provision of the first section of the Fourteenth Amendment to the Constitution of the United States which forbids a State to deny to any person within its jurisdiction the equal protection of the laws.

IV.

"In holding and deciding that the law complained of was a valid statute, that it did not abridge or deny a right and privilege derived from the Constitution of the United States (to wit, the status of resident and citizen of Maryland), and that it was not repugnant to that portion of the first section of the Fourteenth Amendment to the Constitution of the United States which declares that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

"Wherefore, because of the above recited errors, it is prayed that the decision and judgment of the Court of Appeals of Maryland, rendered in the above entitled cause, be reversed, with direction." (Record, pages 6 and 7.)

POINTS.

For the defendants in error it will argued:

I.

That the writ of error should be dismissed because it is no longer within the power of the defendants to register the

plaintiff, for the reason that the registration books are not now and never will or can be in their possession or custody or subject to their control.

Their work as registration officers came to an end on the Tuesday, three weeks before the election on the 3d of November, 1903.

Maryland Code, Article 33, Sections 29 and 30.

Their possession and custody of these books ceased two days thereafter.

Code, Article 33, Section 30.

All their duties and powers as registration officers have long since terminated.

After the election the registration books were delivered to the Supervisors of Election of Montgomery County, in whose custody they now are and in whose custody they will remain until the expiration of their term of office on the second Monday of May, 1904.

Under the existing law of Maryland an entirely new registration will be made in the counties of Maryland and in the city of Baltimore in September and October next.

The terms of the existing Boards of Supervisors of Election in the several counties and in Baltimore City will expire by constitutional limitation in May next. The successors in office of the Board for Montgomery county will be charged with the duty of appointing a new Board of Registry for that county in July, 1904.

The defendants accordingly are now absolutely *functi officio*, and no mandate of this Court directing them to register the plaintiff as is now prayed for by him could be effective.

The defendants could not obey it. As to them it would be wholly nugatory.

Practical difficulties of this kind in the way of a reversal of judgments or orders appealed from are not new in this Court.

"The duty of this Court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when pending an appeal from the judgment of a lower Court and without any fault of the defendant, an event occurs which renders it impossible for this Court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the Court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence."

Mills vs. Green, 159 U. S. 653.

"The lower Courts of the United States and this Court on appeal from their decisions take judicial notice of the Constitution and public laws of each State of the Union."

Ibid, 657.

This very question arose in Schilling vs. Summerson, 94 Md. 582; Ibid., 591, and the Court of Appeals there held that they could not issue a mandatory order to compel the Board of Registry to register a person after the election.

This point, if well taken, disposes of the case and will necessarily call for dismissal of the writ of error.

II.

But apart from this, we shall contend that the Act (Section 25 B) does not violate any provision of the 14th Amendment, and is consequently altogether valid.

A.

It does not in any way affect or impair any "fundamental and inalienable rights" of the plaintiff as a citizen of the United States secured or guaranteed to him by that Amendment.

It does not subject him to any "offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of *civil* rights and privileges," much more *political* rights and privileges contrary to that amendment. Nor does it deny or abridge his privilege to remove from his former home in the District of Columbia to a new home in Maryland, or put any obstacles whatever in the way of such removal.

B.

It does not operate as an unjust discrimination against him as a citizen of the United States removing into Maryland, nor "deny" to him "the equal protection of the laws."

C.

On the contrary, it is a law which applies uniformly and equally to *all* citizens of the United States removing into Maryland and desiring to become qualified voters therein without distinction or discrimination of any kind whatsoever, and relating exclusively to suffrage wholly irrespective of race, color or previous condition of suffrage is not within any of the prohibitions, or provisions of the 14th Amendment or of the 15th Amendment.

ARGUMENT.

I.

Construction and Effect of the Act.

Obviously the first question that presents itself is the meaning and intent of the Act. These are not difficult to see. We were suffering in Maryland from an influx of non-residents, the length and purpose of whose sojourn in the State, so as to entitle them to registration as legally qualified voters, were not always easy to ascertain with any degree of reasonable certainty. Depending as the question of *residence* in such cases does upon the permanent abandonment of one domicile and the acquisition of another, accompanied by a

definite and fixed intention to give up the old and make this new domicile the home, abode, habitation, residence, it is apparent that residence in its legal sense is made up of two distinct elements: *first*, the physical, tangible fact of removal into the State; and *second*, the *quo animo* or intent with which such removal is made.

Mitchell vs. U. S., 21 Wall., 350.

Confessedly, a man may reside, that is to say, dwell in and occupy a habitation for a longer or shorter time, either with or without entertaining the intent necessary to constitute *legal residence*. From the fact of a continuous dwelling in one place for one year an inference *may* be drawn that the occupant of a dwelling in such place intended thereby to acquire a *legal* residence. But this inference will plainly be erroneous if in point of fact such intention did not exist during the whole of that year. And wherever the question of legal residence *vel non* for one year arises, the evidence necessary to establish such residence must show the existence of the actual habitation for that period, and at the same time and *for the same length of time* the existence of the intent thereby to acquire such legal residence. There must be, in short, a co-existent concurrence of the outward visible domicile, and the inward, but none the less real intent—*and both must be proved.*

When a man who has resided all his life in the District of Columbia moves into Maryland, he may go there *either* as a temporary sojourner not intending to locate himself there permanently with a view to becoming a citizen and voter; *or* he may go there with the fixed and definite intent of quitting altogether his former abode and of acquiring a permanent home and legal residence there, *accounting from the very commencement of his removal into the State; or again* he may go with no definite intent at all at first, and may not form his intent to become a citizen, and in due time thereafter a voter, until some time *after* his removal.

All these three classes of cases may and do constantly occur.

Now, under the Constitution of Maryland a fixed residence of one year within the State accompanied by an actual intent to become a resident, coincident with such actual residence and *for the same length of time*, that is, for one year, is necessary to entitle a person coming from another State or from any district or territory to be registered as a qualified voter in Maryland.

How to ascertain whether non-residents coming into Maryland from other States, districts or from any one of the territories, and presenting themselves for registration as legally qualified voters, have in fact lived in Maryland for one year, with the intent accounting from the commencement of their removal into the State to acquire a legal residence, entitling them to registration as voters, came to be a practical, serious and disturbing question.

How to deal with this situation, was the difficulty.

Under pre-existing law, that is to say, according to common law rules of evidence, modified by the statutory enactments making parties competent witnessess in their own behalf, and giving them the right to testify as to their intent in respect of any step taken or thing done or proposed to be done, a party claiming to have acquired the legal right to register as a qualified voter by reason of a residence for one year in the State, could testify as to the date of his coming into the State and as to his intent to acquire a legal residence, which when continued for one year would entitle him to registration and he could also testify as to the precise *punctum temporis* when such intent was first formed. (Fenwick vs. State, 63 Md. 241; Fisk vs. Chester, 8 Gray, 508.) *His testimony might be true or false.*

He could also prove his oral or written declarations showing such intent, and his intent could also be sought to be inferred from his acts. On the other hand, his declarations

and acts inconsistent with such intent could be proved against him.

If nothing to the contrary appeared, the *intent* to acquire a legal residence might be *presumed* and frequently was presumed from the bare *fact* of actual residence, when such actual residence and the precise time of its commencement were clearly and truly proved.

Prior to the enactment of section 25 B, our Maryland law admitted all testimony of this kind to prove or disprove that the person applying for registration as a voter, possessed the constitutional qualifications—and the result was that the determination as to the existence or non-existence of the constitutional qualifications became a matter of doubt, difficulty, conflicting testimony and rebuttable presumption. In other words, the decision of the question depended upon rules of evidence and their correct and proper application to the facts of each case.

After some careful consideration it was believed that the difficulty could be lawfully and constitutionally obviated by appropriate legislation to take effect *in futuro*, prescribing a simple, easy, uniform, reasonable and definite rule of evidence whereby and whereby alone, the intent of the non-resident to become a resident, so as in due time to be entitled to registration as a qualified voter, might be unmistakably manifested and proved. It was believed to be within the clear power of the Legislature to change and modify pre-existing rules of evidence relating to the subject, care being taken that the change did not disturb or impair vested rights nor alter, add to or abrogate the constitutional qualifications of voters.

Cooley's Const. Law (7th Edition, 1903), 524.

11 Am. and Eng. Encycl. of Law (2d Edition), title Evidence, page 550, and cases there cited.

6 Am. and Eng. Encycl. of Law (2d Edition), title Constitutional Law, page 950, and cases there cited.

Section 25 B was drawn in this view. Its meaning is clear; its purpose apparent. It applies equally to all non-residents coming into the State, whether white or colored. It operates *prospectively* and only upon persons who after its passage choose to take up their residence in Maryland. The declaration of the intent to acquire a legal residence is required to be made to the clerk of the Circuit Court for the county, and to be recorded by him without cost to the party, and a copy is to be furnished to the party without charge. The old rule of evidence, whereby oral declarations of intent were admissible is annulled, and this recorded written declaration is substituted as the only competent testimony.

The Court of Appeals have decided in several cases that legislation of this sort relating to persons abandoning their homes in Maryland and removing from the State into other States, is constitutional and valid.

Act of 1890, ch. 573, sec. 14.
Act of 1901, ch. 2.
Code, Article 33, title Elections, sec. 25 A.
Shaeffer vs. Gilbert, 73 Md. 70-72.
Southerland vs. Norris, 74 Md. 326.
Sterling vs. Horner, 74 Md. 573.
McLane vs. Hobbs, 74 Md. 166.
Bowling vs. Turner, 78 Md. 595.
Thomas vs. Warner, 83 Md. 20.
Howard vs. Skinner, 87 Md. 559.

By their judgment in the present case they have decided that this Section 25 B is nothing but a lawful regulation of the evidence necessary to prove what constitutes "residence," as used in the State Constitution; that it does not impose qualifications for voting other than those prescribed by the Constitution; that the statutory requirement is not unreasonable or vexatious and that it does not hinder or deter any one from acquiring and exercising the right to vote.

II.

Starting, therefore, with this plain and final exposition and construction of the meaning, purpose and effect of the

Act, (which construction this Court will accept and respect as absolutely binding,) we come to the next question, viz: *How does this law, thus construed, touch or relate to any subject or matter covered by the Fourteenth Amendment?*

As has been shown it is not in any sense or to any extent a prohibition against the right of non-residents of Maryland who shall come into the State and take up their domicile or residence therein to be registered *after they shall have acquired a legal residence of one year*, but it is only a reasonable and lawful regulation of the *evidence* necessary to be exhibited by such persons to prove the fact of such residence for one year in order to entitle them to registration as qualified voters. It deals exclusively with the registration of voters as preliminary to and as a part of the exercise by them of the right of voting in Maryland. It is merely one of the regulations of the mode of exercising their right—applicable equally, uniformly and without distinction or discrimination to all persons coming within its provisions—and not at all a denial or an abridgment by State officials acting under State law of the *right to vote* of any *qualified* voter whatsoever.

It is, in short, simply and plainly a rule of evidence.

This being indisputably clear we are led to inquire into the nature and origin of the right to vote.

What sort of a right is it, and whence under our system of government is it derived?

A. *Its nature.*

Citizenship and suffrage are by no means inseparable; the latter is not one of the universal, fundamental, inalienable rights with which men are endowed by their Creator, but is altogether conventional.

Suffrage is not a right of property or absolute personal right.

The authorities leave no room for doubt or debate on this question.

The subject was fully considered by the Court of Appeals of Maryland in the great case of Anderson vs. Baker, 23 Md. 531-629, in which the validity of the Constitution of 1864 and the Registration Act of 1865, passed in conformity with its provisions, disfranchising Southern Sympathizers, was discussed and upheld.

Cochran, J. (pp. 578, 579:)

> "As we have seen, the right of suffrage is bestowed on the citizens as a necessary element in every representative Government, to the end, that the Government ordained, may be perpetual and permanent, and the purposes contemplated by its establishment, more effectually accomplished. 'The right of voting,' says STORY, in his *Commentaries on the Constitution, sec.* 580, 'like many other rights, which, whether it has any fixed foundation in natural law or not, has always been treated in the practice of nations, as a strictly civil right, derived from and regulated by each society according to its own circumstances and interests.' With us, the privilege appears to be altogether conventional and derivative, and not original or inherent in the citizens. Prescribed by the people in the exercise of their organic power, for the purpose of giving effect to their expressed will, it is impossible in the nature of things, that it should exist, or have an existence independent of that will. It is held to be a privilege, conferable by the people for sovereign purposes on a greater or less number of citizens, and the power to confer it for purposes that they may change at pleasure, necessarily implies power to withdraw or suspend it. But this is not all. The people, in clothing a citizen with the elective franchise, for the purpose of securing a consistent and perpetual administration of the Government they ordain, charge him with the performance of a duty in the nature of a public trust, and in that respect, constitute him a representative of the whole people. This duty requires that the

privilege thus bestowed, should be exercised, not exclusively for the benefit of the citizen, or class of citizens possessing it, but in good faith, and with an intelligent zeal for the general benefit and welfare of the State. It is on that ground that the corruption of the privilege by bribery, is denounced as a crime; and that adherents to a public enemy, conspirators against established authority, and felons are held to be unfit, and unsafe depositaries of a privilege, the disinterested, honest and faithful exercise of which is so vital to the preservation of public justice and tranquility. In no case, so far as we have learned, has the right of suffrage ever been conferred on all the citizens of any State. In many of them, the qualifications prescribed for its exercise, are such, that large numbers of the citizens are altogether excluded from its enjoyment, while in others, the privilege, where once conferred, has been withdrawn and bestowed on citizens not before possessed of it. By the first Constitution of this State, adopted in 1776, the right of suffrage was limited to all freemen, without regard to color, above the age of twenty-one years, having a freehold of fifty acres in the county of the voter's residence, and to all freemen having property in the State, above the value of thirty pounds current money."

"In 1802, a radical change was made in this provision of the organic law by an amendment, which declared, '*that every* WHITE *male citizen of this State, and no other, above the age of twenty-one years,*' having resided, &c., should '*have a right of suffrage.*' It is unnecessary, however, to multiply illustrations of this exercise of the sovereign power of the States. In this particular it is sufficient, for our present purpose, to show that the elective franchise, as a privilege of the citizen, is a matter, of which, the people of the State have the absolute control."

Weisel, J. (pp. 596, 597):

"The right of suffrage is not an original, indefeasible right, even in the most free of Republican Governments; but every civilized society has uniformly fixed, modified and regulated it for itself, according to its own free will and pleasure, and in these United States, every Constitution of Government has assumed, as a fundamental

principle, the right of the people of a State to alter, abolish and modify the form of its own Government, according to the sovereign pleasure of the people. The right to vote, like the right to hold office, being thus conferred upon the voter by the sovereign will of the people in their organic law or Constitution of Government, the question, upon whom it ought to be conferred, and what should constitute its boundaries and limits; in other words, what should qualify and what should disqualify, is one which the people themselves are to settle. So various are the circumstances, habits, wants, character, conditions, pursuits, dangers and difficulties of different people, that no fixed or certain rule can be laid down, by which the right of suffrage can be imparted. No one has ever yet pretended that the right should be universal, in the most enlarged or extended sense of that term, so as to embrace every age, sex, character and condition. In every State in the American Union, females are excluded from voting and holding office, though taxable citizens, and represented in legislative bodies; so with regard to minors, though they, of the male sex, in addition to being taxed if owners of property, and represented, are also required to bear arms when of the required military age and bodily constitution. In most of the States, Africans are excluded, though they may be taxed, and, under certain circumstances of age, sex, &c., required to do military duty. And even in the qualified class, exceptions are made; in other words, disqualifications imposed. If, for instance, all free white male persons over twenty-one years of age be qualified to vote under a general provision, exceptions can be made, and generally are made, so as to exclude from the qualified class those who are aliens, idiots, insane, paupers, &c., or those who may have been convicted of crime, or those who may have by any means, rendered themselves dangerous depositories of such a privilege. All these regulations and limitations are, in my judgment, clearly acts of sovereign power, to be exercised or not; and if exercised, to such degree or extent, as the sovereign power shall determine. The common good of the whole, is the end proposed by every well organized society, and if a restriction of the right of suffrage be deemed necessary or expedient by the sovereign power to attain this end, under the circumstances

in which the public interests are placed, there can be no valid objection so to exercise this authority. A liberal exercise of the power may at one stage in the history of a people, be proper and judicious, whilst, at another, a more restrictive policy may be demanded. And what one people may regard as essential, another, at the same time and under similar circumstances, may consider injurious or prejudicial, and therefore, may make different provision to avoid the danger. These principles and views Justice Story deduces from all the leading authorities upon this subject—the best writers upon natural and constitutional law, both of our own country, and those countries in Europe, in which liberal institutions have in any form or at any time existed.

1 Story on Constitution, section 577 to 584."

Bowie, C. J. (pp. 619, 620):

"Among the absolute, unqualified rights of the State, is that of regulating the elective franchise. It is the foundation of State authority. The most important political function exercised by the people in their sovereign capacity. The 3d Article of the Declaration of Rights affirms, 'that the people of this State ought to have the *sole and exclusive right* of regulating the internal government and police thereof.'

"Whilst 'the right of the people to participate in the Legislature is the best security of liberty and foundation of all free government,' yet it is subordinate to the higher power of regulating the qualifications of the electors and the elected. The original power of the people, in their aggregate political capacity, is delegated in the form of suffrage to such persons as they deem proper, for the safety of the Commonwealth, hence the right is limited to '*every free white male citizen* having the qualifications prescribed by the Constitution.' *Citizenship and suffrage are by no means inseparable; the latter is not one of the universal inalienable rights with which men are endowed by their Creator, but is altogether conventional.*

"Story, treating of this subject, says: 'Every Constitution of government in these United States has assumed, as a fundamental principle, the right of the people of the State to alter, abolish and modify the

form of its own government, according to the sovereign pleasure of the people. In fact, the people of each State have gone much further, and settled a far more critical question, by deciding who shall be the voters entitled to approve and reject the Constitution framed by a delegated body under their direction.' 1 *Story on Const., ch.* 9, *sec.* 581. * * * * 'From this it will be seen how little, even in the most free of republican governments, any abstract right of suffrage, or any original and indefeasible privilege has been recognized in practice.' *Id.* * * * * 'In no two of these State Constitutions will it be found that the qualifications of the voters are settled upon the same uniform basis, so that we have the most abundant proofs that among a free and enlightened people, convened for the purpose of establishing their own forms of government, and the rights of their own voters, the question as to the due regulation of the qualifications, has been deemed a matter of mere State policy, and varied to meet the wants, to suit the prejudices, and to foster the interests of the majority. An absolute, indefeasible right to elect or be elected, seems never to have been asserted on one side, or denied on the other; but the subject has been freely canvassed, as one of mere civil polity, to be arranged upon such a basis as the majority may deem expedient, with reference to the moral, physical and intellectual condition of the particular State.' *Id. sec.* 582.

"None of the elementary writers include the right of suffrage among the rights of property or person. It is not an absolute, unqualified, personal right."

See also—Cooley's Principles of Constitutional Law, 276, 277.

Gougar vs. Timberlake, 148 Indiana, 38.

Black's Constitutional Law, 466.

Story on Constitution, section 581.

B.

Its Origin.

Before the Fourteenth Amendment the whole subject of the elective franchise was within the exclusive control of the

several States and the right or privilege of voting was (as it still is) *a right or privilege arising under the Constitution of each State and not under the Constitution of the United States.*

Anderson vs. Baker, 23 Md. 623.
Cooley's Principles of Const. Law, 277.
Kineen vs. Wells, 144 Mass. 497.

In the last case, Devens J, speaking for the Court, says:

"The qualifications of voters are fixed by State legislation. The requirements as to ownership of property, citizenship, sex and *residence*, in connection with the right of voting, vary with the constitutions or laws of the several States. However unwise, unjust or even tyrannical its regulations may be, or seem to be, in this regard, the right of each State to define the qualifications of its voters is complete and perfect, except so far as it is controlled by the Fifteenth Amendment, which declares 'that the right of citizens of the United States shall not be denied or abridged by the United States, or by any State, on account of race, color or previous condition of servitude.'"

To the same effect are—

Stone vs. Smith, 159 Mass. 413.
Gougar vs. Timberlake, 148 Indiana, 38.
16 Albany Law Journal, 272.
U. S. vs. Susan B. Anthony, 11 Blatchford C. C. 202, 205.
Van Valkenburg vs. Brown, 43 California, 43.

More than two hundred cases bearing upon the Fourteenth Amendment have been decided by this Court, but of these only a few involved the question of State suffrage as touched by the Constitution of the United States either before or after that Amendment.

In Minor vs. Happersett, 21 Wallace, 178, it was held (Chief Justice Waite delivering the opinion of the Court)

that the Constitution of Missouri, which limits to *males* the right to vote does not violate the Fourteenth Amendment, for the reason that the right of suffrage was not one of the privileges or immunities of citizenship before that Amendment, and that the Amendment does not add to these privileges, but simply furnishes additional guaranty for the protection of such as the citizen already had: that neither at the time of the adoption of the Constitution or of the Fourteenth Amendment was suffrage co-extensive with citizenship of the States, and that neither the Constitution nor the Fourteenth Amendment made all citizens voters.

The question was again considered in United States vs. Reese, 92 U. S. 214. There the Chief Justice, again speaking for the Court, said (pages 217-218):

> "The Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference in this particular to one citizen of the United States over another on account of race, color or previous condition of servitude. Before its adoption this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, etc., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment there was no constitutional guaranty against this discrimination. Now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress—that right is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude."

Again, the subject came up in United States vs. Cruikshank, 92 U. S. 542, and once more the Chief Justice, speaking for the Court, said (pages 555–6):

"In Minor vs. Happersett, 21 Wall. 178, we decided that the Constitution of the United States has not conferred the right of suffrage upon any one, and that the United States have no voters of their own creation in the States. In United States vs. Reese, we held that the Fifteenth Amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color or previous condition of servitude. From this *it appears that the right of suffrage is not a necessary attribute of national citizenship;* but that exemption from discrimination in the exercise of that right on account of race, etc., is. *The right to vote in the States comes from the States;* but the right of exemption from the prohibited discrimination comes from the United States—*the first has not been granted or secured by the Constitution of the United States;* but the last has been."

Under these carefully considered decisions, which have never been modified, we respectfully submit that suffrage is not a natural, fundamental, inalienable personal right, but that it is a creature of law and may be given upon terms and conditions prescribed by the sovereign power—given to some and withheld from others—that from the beginning of our Government, down to the adoption of the Fifteenth Amendment, the whole subject was confided, exclusively, to the control of the several States without limitation, reservation or restriction—that it was not one of the "privileges and immunities" embraced in and covered by Section 2 of Article 4 of the Constitution of the United States, which declares that "the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States"—that it was not made one of the privileges and immunities of citizens of the United States, nor was the absolute control of the States over it existing at the time of the adoption of the Fourteenth Amendment at all affected, impaired or abridged by that Amendment; and that since the adoption of the

Fifteenth Amendment the whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color or previous condition of servitude.

United States vs. Harris, 106 U. S. 636-644.
James vs. Bowman, 190 U. S. 127.

There are, it is true, the two provisions, first, that while "the times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators."

Constitution, Article 1, Section 4.
Ex parte Siebold, 100 U. S. 371.
Ex parte Clarke, 100 U. S. 399.
Ex parte Yarbrough, 110 U. S. 651.
In re Coy, 127 U. S. 731.
Logan vs. U. S., 144 U. S. 263.

And, second, that "The Congress may determine the time of choosing the electors and the day on which they shall give their votes; which day shall be the same throughout the United States." *Neither of these reservations applies to the present case.*

Accordingly, the States may prescribe any qualification of age, sex, residence, property or education which they shall see fit to prescribe, provided only that their Constitution and laws regulating the subject shall apply equally, uniformly and impartially to white and colored, native and naturalized alike.

Therefore, inasmuch as section 25 B makes no distinction or discrimination on account of race, color or previous condi-

tion of servitude, but in express terms applies to "*all* persons," it does not impair, abridge, affect, or even touch any privilege or immunity of the plaintiff in error which is covered by the guaranty of the Fourteenth Amendment.

Williams vs. Mississippi, 170 U. S. 213.
Gibson vs. Mississippi, 162 U. S. 582.
Giles vs. Harris, 189 U. S. 475.
James vs. Bowman, 190 U. S. 127.

III.

If these views be sound, it necessarily follows that the plaintiff has no just or lawful ground of complaint against the Act.

It is a part of the general election law of Maryland, in force in July, 1902, when he chose to come into the State. It is applicable, *equally and impartially, to* ALL *persons* who, after its passage, see fit to remove into Maryland from any other State, district or territory. It exacts from all such persons, as a preliminary to their acquisition of a right to register and vote, a simple record by the clerk of the Circuit Court of their intent to become citizens and residents of the State, upon their mere statement of such intent. The plaintiff, with actual knowledge of the law, deliberately refused to obey it. He did not go in person to the county seat and ask to be registered. He did not even send (as he might have done) a statement to the clerk of his removal into the county, together with his name, age, residence and occupation, and his intention to acquire a legal residence in the State.

After thus wilfully disregarding the law passed for the protection of the people of the State against the evils of fraudulent, dishonest or erroneous voting by persons not really, truly and *bona fide* citizens and residents of the State (this protection consisting in the establishment of a simple, inexpensive, easy and reasonable test of residence), he now appeals to this Court to sustain him in his wilful defiance

of its provisions, and to take, for the first time in its history, jurisdiction over a subject heretofore belonging exclusively to the States and to which the judicial power of the United States has never been extended from the foundation of the Government to this day.

We ask that his appeal for relief be denied.

IV.

But if it can be assumed that this contention on behalf of the defendants is too extreme, and that even in respect of a matter solely relating to State suffrage *confessedly not affected by the Fifteenth Amendment*, this Court can review the judgment of the Court of Appeals, we respectfully contend that none of the points assigned as errors can be sustained.

A.

As to the performance of alleged "offensive, vexatious and oppressive conditions as a prerequisite to the acquisition and enjoyment of CIVIL *rights and privileges."*

As already shown, the Court of Appeals held that the requirement of registration of name, age, occupation and residence prescribed by the State law is a reasonable regulation. There ought not to be any room to doubt that this is a correct exposition of the law. There is nothing in it which compels a personal visit to the county seat and a registration there in person. And if there were, such a requirement is not burdensome and no more troublesome than the visit to the office of the Board of Registry to be registered as a voter. Doubtless, the going to the clerk's office is an easy mode of compliance. But if for any reason a person desiring registration should find it inconvenient to go to the clerk, in his office at the county seat, the clerk, upon invitation, could easily go to the person at his home. A postal card, costing one cent, would promptly secure this official attention.

And again, a written declaration of the applicant for registration stating his name, age, occupation and residence,

and his intention to become a citizen and resident of the State sent by mail or messenger to the clerk would be sufficient. No clerk under the Statute could lawfully refuse to make the prescribed entry when notified in either of these modes, and this Court cannot suppose that any Maryland Court would hesitate to secure registration to any petitioner wrongfully denied registration by the clerk when thus applied to.

It is difficult to discuss seriously such a microscopic objection to the law, or to consider without merriment the grave and solemn picture which the plaintiff draws of the terrible hardships the law inflicts upon the individual who is so eager to become a qualified voter in Maryland that he will not spend a postage stamp to make known his wish and intention to the clerk of the Court!!

But further, the right which the plaintiff claims that the Act denies or abridges, is not, as he mistakenly calls it, a "fundamental and inalienable right." It is merely the right to vote; the regulation of which right belongs exclusively to the State; nor is it even a *civil* right or privilege, but altogether a *political* right, not necessarily resulting from citizenship and over the acquisition and enjoyment of which the judicial power of the United States has no jurisdiction or control whatever, except in cases falling within and governed by the 15th Amendment.

Scott vs. Sandford, 19 Howard, 393.
Ward vs. Maryland, 12 Wall. 418.
Slaughter-House Cases, 16 Wall. 79.
Neale vs. Delaware, 103 U. S. 370.
Ex parte Yarbrough, 110 U. S. 651.
Mills, J., in Amy vs. Smith, 1 Litt. (Ky.) 326.
Lanz vs. Randall, 4 Dill. 425.
Short vs. State, 80 Md. 401-2.
Anderson vs. Baker, 23 Md. 531.

There is accordingly no force in the plaintiff's first assignment of error.

B.

As to the alleged denial by the State law of "the equal protection of the laws."

It is somewhat difficult to apprehend what is meant by this objection; but here too even if we assume that notwithstanding the law deals with the subject of State suffrage, and even if we further assume that the right to vote is a "privilege and immunity" within the meaning of section 2 of Article 4 of the Constitution of the United States and of Section 1 of the Fourteenth Amendment, neither of these sections covers this case. The privileges and immunities protected are the privileges and immunities of *citizens of the United States*, and neither of these provisions was intended to control the power of the State government over the rights of its own citizens.

The protection designed by the clause of the Fourteenth Amendment declaring that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, as has been repeatedly held, has no application to a citizen of the State whose laws are complained of.

Bradwell vs. State, 16 Wall. 130.
In re Taylor, 48 Md. 28.
In re Maddox, 93 Md. 728-9.

As to the privileges and immunities belonging to the citizens of a State, these "must rest for their security and protection where they have heretofore rested," that is, with the State in which the citizen resides.

Slaughter-House Cases, 16 Wall. 74-75.
Presser vs. Illinois, 116 U. S. 266.
Short vs. State, 80 Md. 401.

By removing into Maryland the plaintiff became a citizen of that State and voluntarily subjected himself to the operation of her laws, Why then shall he not be bound by them?

But giving effect *ex gratia* to the extreme contention (which it is believed this Court has never sanctioned) that the effect of the Fourteenth Amendment is to impose upon the States the prohibitions of the first ten Amendments, and that the clause in the Fourteenth Amendment that no State shall "deny to any person within its jurisdiction the equal protection of the laws," applies to the election laws of the several States, and, that where such laws do not give equal protection to all the citizens of the State in respect of the exercise of the elective franchise, this Court has the power to adjudge such laws void for that reason, we maintain that Section 25 B does not deny equal protection to any person covered by its provisions, and hence is not in conflict with that clause (or any clause) of the Amendment.

The law only imposes upon the plaintiff the same obligation which it requires of all other persons similarly situated. It operates on *all* such persons *equally and alike.*

Decisions of this Court, since the celebrated Slaughter-House Cases, 16 Wallace, 36, do not justify the doubt, expressed by Mr. Justice Miller in his great opinion in those cases "whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race will ever be held to come within the purview of this provision." But, certainly all must agree with him that "it is so clearly a provision for that race and that emergency that *a strong case would be necessary for its application to any other.*"

Is it possible to fairly claim that such a strong case is presented here?

In considering this aspect of the case, a clear understanding of the precise meaning of the phrase "equal protection of the laws" is obviously essential.

The question has come before this Court, in a great variety of ways and has been fully considered, copiously illustrated and may well be said to be now absolutely settled.

Equality of protection extends only to *civil* rights as distinguished from those that are *political* or arise from the form of the government and its mode of administration.

Field J., *Ex parte*, Virginia, 100 U. S. 637-8.

Equal protection of the laws is a pledge of the protection of equal laws.

Yick Wo vs. Hopkins, 118 U. S. 369.

This clause contemplates persons and classes of persons.

It is not violated by any diversity in the jurisdiction in the several courts as to subject matter, amount or finality of decision, if all persons within the territorial limits of their respective jurisdictions have an equal right in like cases and under like circumstances to resort to them for redress.

Missouri vs. Lewis, 101 U. S. 30-31.

A statute applicable to all lands of the same kind is not in conflict with the clause.

Wurts vs. Hoagland, 114 U. S. 615.

Class legislation discriminating against some and favoring others is prohibited, but legislation, which in carrying out a public purpose is limited in its application if within the sphere of its operation it affects alike all persons similarilarly situated, is not within the amendment.

Munn vs. Illinois, 94 U. S. 134.
Chicago R. R. Co. vs. Iowa, 94 U. S. 163.
Barbier vs. Connolly, 113 U. S. 27-32.
Soon-Ling vs. Crowley, 113 U. S. 703.
Missouri Pacific R. R. Co. vs. Humes, 115 U. S. 523.

Kentucky R. R. Tax Case, 115 U. S. 337.
Presser vs Illinois, 116 U. S. 266.
Hayes vs. Missouri, 120 U. S. 71, 72.
Dow vs. Biedelman, 125 U. S. 691.
Missouri R. R. Co. vs. Mackey, 127 U. S. 209, 210.
Powell vs. Pennsylvania, 127 U. S. 687.
Walston vs. Nevin, 128 U. S. 582, 583.
Minnesota R. R. Co. vs. Beckwith, 129 U. S. 29.
Home Ins. Co. vs. New York, 134 U. S. 606, 607.
Marchant vs. Pennsylvania R. W., 153 U. S. 389, 390.
St. Louis and San Francisco R. Y. vs. Mathews. 165 U. S. 24-26.
Gulf C. & S. F. R. W. vs. Ellis, 165 U. S. 155.
Orient Ins. Co. vs. Daggs, 172 U. S. 557.
Ins. Co. vs. Warren, 181 U. S. 73.
Ins. Co. vs. Mettler, 185 U. S. 308.
Billings vs. Illinois, 188 U. S. 97.
Kidd vs. Alabama, 188 U. S. 730.
Farmers' Ins. Co. vs. Dobney, 189 U. S. 301.
Short vs. State, 80 Md. 402.
Brannon on 14th Amendment, Chapter 16.
Equal Protection of the Laws, 315-380.
Guthrie on 14th Amendment, 106-142.

There is, therefore, no force in this assignment of errors.

C.

As to the alleged denial or abridgment of the right or privilege of the plaintiff, derived from the Constitution of the United States, to wit., his status of resident and citizen of Maryland.

The 14th Amendment made the plaintiff a *citizen* of the United States. When he removed into Maryland, he became also a citizen of Maryland by virtue of his being a citizen of the United States, *but he did not thereby become entitled to vote. His right to vote depends upon his complete acquisition of the qualifications prescribed by her Constitution and laws.*

The RESIDENCE *necessary to entitle him to be registered as a qualified voter he has never acquired,* for the reason that he has never manifested the intent to acquire such residence by furnishing the specific evidence of such intent, which the State law requires as *"the only competent and admissible evidence of such intent."*

He now asks this Court to relieve him from the necessity of furnishing such proof and to declare that he shall be conclusively presumed to be entitled to registration as a qualified voter from the *simple fact* that he is now living and has been living (as he asserts) in Montgomery county for more than one year, and he asks this in the teeth of the State law, which forbids such presumption and exacts other specific proof.

Surely the 14th Amendment can not be so interpreted as to bring about such a result. It does not make the plaintiff a citizen of Maryland and thereby give him the right to vote irrespective of her Constitution and laws passed in conformity with its provisions.

It does not annul the qualification of residence and intention to become a citizen prescribed by the State Constitution, and substitute for the evidence of such intention required by the State law other and different and, under the State law, incompetent and inadmissible evidence.

It does not mean that the State cannot lawfully declare by legislation how the necessary qualification of *residence* shall be proved, and that no matter how incomplete and objectionable the old vague and troublesome rules of evidence have been found by experience to be, she cannot repeal, amend, alter and improve them, so as to remedy an evil which disturbs the proper administration which she desires of her own internal State and county government.

It does not extend the judicial power of the United States to such a case as that presented by this record, nor furnish ground for a decree annulling a State law which relates merely to the mode and measure of proving the essential fact of residence as a qualification for the registration of

voters, where no distinction whatever is made on account of race, color or previous condition of servitude.

This assignment of errors cannot therefore be sustained.

V.

But apart from all these considerations the 14th Amendment does not touch the case at all. A State law relating to suffrage is not within its provisions, and if the State law be not contrary to the 15th Amendment, this Court has no power to declare it void or to pass at all upon its expediency, wisdom or validity.

Recurring to the language of this Amendment—considering it as a whole and examining its several clauses—bearing in mind the great historic event which led to its adoption, and the primary and paramount purpose which it was intended to accomplish, there can be no room to doubt that it was never designed to deprive the States of the control over the suffrage which they had possessed and exercised from the beginning of our federal government.

Up to the time of its adoption Congress had never even attempted to regulate "the times, places and manner of holding elections for senators and representatives, as authorized by section 4 of Article 1 of the Constitution, but had left the subject to State legislation exclusively.

Ex parte Siebold, 100 U. S. 371.
Ex parte Yarbrough, 110 U. S. 651.
In re Coy, 127 U. S. 731.

The framers of the amendment never contemplated any interference by force of its provisions with this time-honored State's right.

Slavery having been abolished by the Thirteenth Amendment, their purpose in the Fourteenth Amendment was to make the negro a citizen *of the United States*, and thus to overrule and reverse forever the decision of this Court in the Dred Scott Case that he was not such citizen. The first clause accomplishes this purpose completely. The subsequent clauses of the first section were designed to secure to

the freedmen thus enfranchised and made citizens the rights and immunities of citizens of the United States throughout the entire Union; to protect them in their natural right to life, liberty, property and the pursuit of happiness; and as to all these vital, fundamental and inalienable rights to make them the equals before the law of white men in their civil rights, by a constitutional guaranty of this equality, and a prohibition against its denial or abridgement.

The *political* right or privilege of the suffrage was, however, left untouched. No clause of the first section of the amendment had any reference to it; but complete control over it was still reserved by the States without diminution.

That this was the scheme and scope, purport, meaning and intent of the amendment is demonstrated by two conclusive considerations: *First.* By the clear and unmistakable language of the second section; and, *Second*, by the subsequent adoption of the Fifteenth Amendment in order to secure to the colored man the guaranty of constitutional immunity from hostile discrimination in respect to suffrage, which it was conceded the Fourteenth Amendment did not furnish.

Field, J., *ex parte* Virginia, 100 U. S. 365–8.

If the first section of the Fourteenth Amendment was designed to apply to the question of suffrage and to limit and restrict the previous unlimited and unrestricted control of the States over that subject; if it was intended to deny to the States their absolute dominion over the qualifications of voters, such intent would not have been left to forced and strained implication, but would have been clearly expressed in words whose meaning and force could not be doubted or misunderstood. If its purpose had been to declare void all State legislation which did not grant manhood suffrage without discrimination or restriction, apt language to make this purpose plain would have been used.

But to say to the States that when the right to vote shall be denied or abridged by them for any cause "except participa-

tion in rebellion or other crime," the penalty shall be reduction in congressional representation, is not to deny to them the legal right to deal with their State suffrage as they deem best, but simply to subject them to the prescribed penalty if they should deny or abridge the right to vote except for the enumerated causes. So far from its being a denial of this State right, it is on the contrary a distinct recognition of its continued existence.

The choice was left to them to give to the freedmen the right to vote, or not to give it. But if they did not give it, they were to suffer a diminution in their congressional representation as the *sole* penalty of their refusal. No doubt the statesmen who prepared the Fourteenth Amendment supposed that the terrors of this penalty would not only deter the Southern States from withholding suffrage from the negro, but that it would stimulate its bestowal upon him. But obviously this expectation is very far from a denial of the right of the States to prefer the loss of their congressional representation to a loss of their right to regulate the elective franchise to suit themselves.

If "participation in rebellion or other crime" is the only ground upon which the right to vote could lawfully be denied or abridged under the Fourteenth Amendment, what shall be said of the validity of the educational test, or the property qualification, or the production to election officials of tax receipts, exacted by the constitution and laws of a number of the States?

Did Massachusetts violate the Fourteenth Amendment when she denied suffrage to her illiterate thousands? When Connecticut prescribed ability to read as the necessary test of the right of her citizens to vote, did she deny to them the equal protection of the laws as guaranteed by the Amendment? Clearly not.

Cooley's Principles of Constitutional Law, 291-2.

All this, too plain for reasonable controversy upon the face of the Fourteenth Amendment, is reduced to absolute certainty by the adoption of the Fifteenth Amendment.

If it be true that the Fourteenth Amendment was intended or supposed to restrict the power of the States to legislate in their Constitutions and statutes over the whole subject of suffrage as they severally saw fit, there was no necessity or even occasion for the Fifteenth Amendment. Indeed, the Fifteenth Amendment owes its origin to the conceded fact that neither the Thirteenth nor the Fourteenth Amendment, nor both of them combined, gave the suffrage to the negro or denied to the State the right to exclude him from voting, if they chose to submit to a reduction of their representation in Congress rather than clothe him with the elective franchise.

And accordingly this last Amendment has no application to the question of suffrage, and does not touch the power of the States over suffrage, *except in so far as relates to race, color or previous condition of servitude.*

The States still have their power unrestricted over the elective franchise in all other respects.

Tests, qualifications, disqualifications, denials, abridgments, distinctions, inequalities, may still lawfully be made at the pleasure of the States, provided only they do not discriminate against the negro.

If they apply equally, impartially and uniformly to white and black citizens alike, they are not condemned by the letter or the spirit of the Thirteenth, Fourteenth and Fifteenth Amendments. They may perhaps cost the States a reduction in their Congressional representation in the proportion in which the number of adult males disfranchised by such State legislation bears to the whole number of its adult male population. *But this is the only legal consequence,* and there is no warrant for the contention that the federal judiciary can also declare such legislation absolutely void.

Bearing in mind then that the plaintiff is a white man, and that he concedes that the Maryland law is not at all repugnant to the Fifteenth Amendment, it necessarily follows that as a law relating solely to State suffrage it is not repugnant to or touched by the Fourteenth Amendment, and that, accordingly, this Court has no power to declare it null and void.

Slaughter House Cases, 16 Wall. 81-82.

VI.

We respectfully submit, therefore, that no error can be found in the judgment and decison of the Court of Appeals, and that if the Court shall not sustain our motion to dismiss the writ of error, the judgment of the Court of Appeals should be affirmed with costs.

JOHN PRENTISS POE,
BOWIE F. WATERS,
For Defendants in Error.